



# House of Representatives

## File No. 851

General Assembly

January Session, 2007

**(Reprint of File No. 555)**

Substitute House Bill No. 7155  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 18, 2007

### **AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1       Section 1. (NEW) (*Effective from passage*) (a) As used in this section  
2       and section 2 of this act:

3       (1) "Chemical dependency" means abusive or excessive use of  
4       drugs, including alcohol, narcotics or chemicals, that results in  
5       physical or psychological dependence;

6       (2) "Department" means the Department of Public Health;

7       (3) "Health care professionals" includes any person licensed or who  
8       holds a permit pursuant to chapter 370, 372, 373, 375, 375a, 376, 376a,  
9       376b, 376c, 377, 378, 379, 379a, 380, 381, 381a, 383, 383a, 383b, 383c, 384,  
10      384a, 384b, 384c, 384d, 385, 398 or 399 of the general statutes;

11      (4) "Medical review committee" means any committee that reviews  
12      and monitors participation by health care professionals in the  
13      assistance program, including a medical review committee described

14 in section 19a-17b of the general statutes; and

15 (5) "Assistance program" means the program established pursuant  
16 to subsection (b) of this section to provide education, prevention,  
17 intervention, referral assistance, rehabilitation or support services to  
18 health care professionals who have a chemical dependency, emotional  
19 or behavioral disorder or physical or mental illness.

20 (b) State or local professional societies or membership organizations  
21 of health care professionals or any combination thereof, may establish  
22 a single assistance program to serve all health care professionals,  
23 provided the assistance program (1) operates in compliance with the  
24 provisions of this section, and (2) includes one or more medical review  
25 committees that comply with the applicable provisions of subsections  
26 (c) to (f), inclusive, of this section. The program shall (A) be an  
27 alternative, voluntary and confidential opportunity for the  
28 rehabilitation of health care professionals and persons who have  
29 applied to become health care professionals, and (B) include  
30 mandatory, periodic evaluations of each participant's ability to practice  
31 with skill and safety and without posing a threat to the health and  
32 safety of any person or patient in the health care setting.

33 (c) Prior to admitting a health care professional into the assistance  
34 program, a medical review committee shall (1) determine if the health  
35 care professional is an appropriate candidate for rehabilitation and  
36 participation in the program, and (2) establish the participant's terms  
37 and conditions for participating in the program. No action taken by the  
38 medical review committee pursuant to this subsection shall be  
39 construed as the practice of medicine or mental health care.

40 (d) A medical review committee shall not admit into the assistance  
41 program any health care professional who has pending disciplinary  
42 charges, prior history of disciplinary action or a consent order by any  
43 professional licensing or disciplinary body or has been charged with or  
44 convicted of a felony under the laws of this state, or of an offense that,  
45 if committed within this state, would constitute a felony. A medical

46 review committee shall refer such health care professional to the  
47 department and shall submit to the department all records and files  
48 maintained by the assistance program concerning such health care  
49 professional. Upon such referral, the department shall determine if the  
50 health care professional is eligible to participate in the assistance  
51 program and whether such participation should be treated as  
52 confidential pursuant to subsection (h) of this section. The department  
53 may seek the advice of professional health care societies or  
54 organizations and the assistance program in determining what  
55 intervention, referral assistance, rehabilitation or support services are  
56 appropriate for such health care professional. If the department  
57 determines that the health care professional is an appropriate  
58 candidate for confidential participation in the assistance program, the  
59 entire record of the referral and investigation of the health care  
60 professional shall be confidential and shall not be disclosed, except at  
61 the request of the health care professional, for the duration of the  
62 health care professional's participation in and upon successful  
63 completion of the program, provided such participation is in  
64 accordance with terms agreed upon by the department, the health care  
65 professional and the assistance program.

66 (e) Any health care professional participating in the assistance  
67 program shall immediately notify the assistance program upon (1)  
68 being made aware of the filing of any disciplinary charges or the  
69 taking of any disciplinary action against such health care professional  
70 by a professional licensing or disciplinary body, or (2) being charged  
71 with or convicted of a felony under the laws of this state, or of an  
72 offense that, if committed within this state, would constitute a felony.  
73 The assistance program shall regularly review available sources to  
74 determine if disciplinary charges have been filed, or disciplinary action  
75 has been taken, or felony charges have been filed or substantiated  
76 against any health care professional who has been admitted to the  
77 assistance program. Upon such notification, the assistance program  
78 shall refer such health care professional to the department and shall  
79 submit to the department all records and files maintained by the

80 assistance program concerning such health care professional. Upon  
81 such referral, the department shall determine if the health care  
82 professional is eligible to continue participating in the assistance  
83 program and whether such participation should be treated as  
84 confidential in accordance with subsection (h) of this section. The  
85 department may seek the advice of professional health care societies or  
86 organizations and assistance program in determining what  
87 intervention, referral assistance, rehabilitation or support services are  
88 appropriate for such health care professional. If the department  
89 determines that the health care professional is an appropriate  
90 candidate for confidential participation in the assistance program, the  
91 entire record of the referral and investigation of the health care  
92 professional shall be confidential and shall not be disclosed, except at  
93 the request of the health care professional, for the duration of the  
94 health care professional's participation in and upon successful  
95 completion of the program, provided such participation is in  
96 accordance with terms agreed upon by the department, the health care  
97 professional and the assistance program.

98 (f) A medical review committee shall not admit into the assistance  
99 program any health care professional who is alleged to have harmed a  
100 patient. Upon being made aware of such allegation of harm a medical  
101 review committee and the assistance program shall refer such health  
102 care professional to the department and shall submit to the department  
103 all records and files maintained by the assistance program concerning  
104 such health care professional. Such referral may include  
105 recommendations as to what intervention, referral assistance,  
106 rehabilitation or support services are appropriate for such health care  
107 professional. Upon such referral, the department shall determine if the  
108 health care professional is eligible to participate in the assistance  
109 program and whether such participation should be provided in a  
110 confidential manner in accordance with the provisions of subsection  
111 (h) of this section. The department may seek the advice of professional  
112 health care societies or organizations and the assistance program in  
113 determining what intervention, referral assistance, rehabilitation or

114 support services are appropriate for such health care professional. If  
115 the department determines that the health care professional is an  
116 appropriate candidate for confidential participation in the assistance  
117 program, the entire record of the referral and investigation of the  
118 health care professional shall be confidential and shall not be  
119 disclosed, except at the request of the health care professional, for the  
120 duration of the health care professional's participation in and upon  
121 successful completion of the program, provided such participation is  
122 in accordance with terms agreed upon by the department, the health  
123 care professional and the assistance program.

124 (g) The assistance program shall report annually to the appropriate  
125 professional licensing board or commission or, in the absence of such  
126 board or commission, to the Department of Public Health on the  
127 number of health care professionals participating in the assistance  
128 program who are under the jurisdiction of such board or commission  
129 or in the absence of such board or commission, the department, the  
130 purposes for participating in the assistance program and whether  
131 participants are practicing health care with skill and safety and  
132 without posing a threat to the health and safety of any person or  
133 patient in the health care setting. Annually, on or before December  
134 thirty-first, the assistance program shall report such information to the  
135 joint standing committee of the General Assembly having cognizance  
136 of matters relating to public health, in accordance with the provisions  
137 of section 11-4a of the general statutes.

138 (h) (1) All information given or received in connection with any  
139 intervention, rehabilitation, referral assistance or support services  
140 provided by the assistance program pursuant to this section, including  
141 the identity of any health care professional seeking or receiving such  
142 intervention, rehabilitation, referral assistance or support services shall  
143 be confidential and shall not be disclosed (A) to any third person or  
144 entity, unless disclosure is reasonably necessary for the  
145 accomplishment of the purposes of such intervention, rehabilitation,  
146 referral assistance or support services or for the accomplishment of an  
147 audit in accordance with subsection (l) of this section, or (B) in any

148 civil or criminal case or proceeding or in any legal or administrative  
149 proceeding, unless the health care professional seeking or obtaining  
150 intervention, rehabilitation, referral assistance or support services  
151 waives the confidentiality privilege under this subsection or unless  
152 disclosure is otherwise required by law. Unless a health care  
153 professional waives the confidentiality privilege under this subsection  
154 or disclosure is otherwise required by law, no person in any civil or  
155 criminal case or proceeding or in any legal or administrative  
156 proceeding may request or require any information given or received  
157 in connection with the intervention, rehabilitation, referral assistance  
158 or support services provided pursuant to this section.

159 (2) The proceedings of a medical review committee shall not be  
160 subject to discovery or introduced into evidence in any civil action for  
161 or against a health care professional arising out of matters that are  
162 subject to evaluation and review by such committee, and no person  
163 who was in attendance at such proceedings shall be permitted or  
164 required to testify in any such civil action as to the content of such  
165 proceedings. Nothing in this subdivision shall be construed to  
166 preclude (A) in any civil action, the use of any writing recorded  
167 independently of such proceedings; (B) in any civil action, the  
168 testimony of any person concerning such person's knowledge,  
169 acquired independently of such proceedings, about the facts that form  
170 the basis for the instituting of such civil action; (C) in any civil action  
171 arising out of allegations of patient harm caused by health care  
172 services rendered by a health care professional who, at the time such  
173 services were rendered, had been requested to refrain from practicing  
174 or whose practice of medicine or health care was restricted, the  
175 disclosure of such request to refrain from practicing or such restriction;  
176 or (D) in any civil action against a health care professional, disclosure  
177 of the fact that a health care professional participated in the assistance  
178 program, the dates of participation, the reason for participation and  
179 confirmation of successful completion of the program, provided a  
180 court of competent jurisdiction has determined that good cause exists  
181 for such disclosure after (i) notification to the health care professional

182 of the request for such disclosure, and (ii) a hearing concerning such  
183 disclosure at the request of any party, and provided further, the court  
184 imposes appropriate safeguards against unauthorized disclosure or  
185 publication of such information.

186 (3) Nothing in this subsection shall be construed to prevent the  
187 assistance program from disclosing information in connection with  
188 administrative proceedings related to the imposition of disciplinary  
189 action against any health care professional referred to the department  
190 by the assistance program pursuant to subsection (d), (e), (f) or (i) of  
191 this section or by the professional assistance oversight committee  
192 pursuant to subsection (e) of section 2 of this act.

193 (i) If at any time, (1) the assistance program determines that a health  
194 care professional is not able to practice with skill and safety or poses a  
195 threat to the health and safety of any person or patient in the health  
196 care setting and the health care professional does not refrain from  
197 practicing health care or fails to participate in a recommended  
198 program of rehabilitation, or (2) a health care professional who has  
199 been referred to the assistance program fails to comply with terms or  
200 conditions of the program or refuses to participate in the program, the  
201 assistance program shall refer the health care professional to the  
202 department and shall submit to the department all records and files  
203 maintained by the assistance program concerning such health care  
204 professional. Upon such referral, the department shall determine if the  
205 health care professional is eligible to participate in the assistance  
206 program and whether such participation should be provided in a  
207 confidential manner in accordance with the provisions of subsection  
208 (h) of this section. The department may seek the advice of professional  
209 health care societies or organizations and the assistance program in  
210 determining what intervention, rehabilitation, referral assistance or  
211 support services are appropriate for such health care professional. If  
212 the department determines that the health care professional is an  
213 appropriate candidate for confidential participation in the assistance  
214 program, the entire record of the referral and investigation of the  
215 health care professional shall be confidential and shall not be

216 disclosed, except at the request of the health care professional, for the  
217 duration of the health care professional's participation in and upon  
218 successful completion of the program, provided such participation is  
219 in accordance with terms agreed upon by the department, the health  
220 care professional and the assistance program.

221 (j) (1) Any physician, hospital or state or local professional society or  
222 organization of health care professionals that refers a physician for  
223 intervention to the assistance program shall be deemed to have  
224 satisfied the obligations imposed on the person or organization  
225 pursuant to subsection (a) of section 20-13d of the general statutes,  
226 with respect to a physician's inability to practice medicine with  
227 reasonable skill or safety due to chemical dependency, emotional or  
228 behavioral disorder or physical or mental illness.

229 (2) Any physician, physician assistant, hospital or state or local  
230 professional society or organization of health care professionals that  
231 refers a physician assistant for intervention to the assistance program  
232 shall be deemed to have satisfied the obligations imposed on the  
233 person or organization pursuant to subsection (a) of section 20-12e of  
234 the general statutes, with respect to a physician assistant's inability to  
235 practice with reasonable skill or safety due to chemical dependency,  
236 emotional or behavioral disorder or physical or mental illness.

237 (k) The assistance program established pursuant to subsection (b) of  
238 this section shall meet with the professional assistance oversight  
239 committee established under section 2 of this act on a regular basis, but  
240 not less than four times each year.

241 (l) On or before November 1, 2007, and annually thereafter, the  
242 assistance program shall select a person determined to be qualified by  
243 the assistance program and the department to conduct an audit on the  
244 premises of the assistance program for the purpose of examining  
245 quality control of the program and compliance with all requirements  
246 of this section. On or after November 1, 2011, the department, with the  
247 agreement of the professional assistance oversight committee



248 established under section 2 of this act, may waive the audit  
249 requirement, in writing. Any audit conducted pursuant to this  
250 subsection shall consist of a random sampling of at least twenty per  
251 cent of the assistance program's files or ten files, whichever is greater.  
252 Prior to conducting the audit, the auditor shall agree in writing (1) not  
253 to copy any program files or records, (2) not to remove any program  
254 files or records from the premises, (3) to destroy all personally  
255 identifying information about health care professionals participating in  
256 the assistance program upon the completion of the audit, (4) not to  
257 disclose personally identifying information about health care  
258 professionals participating in the program to any person or entity  
259 other than a person employed by the assistance program who is  
260 authorized by such program to receive such disclosure, and (5) not to  
261 disclose in any audit report any personally identifying information  
262 about health care professionals participating in the assistance program.  
263 Upon completion of the audit, the auditor shall submit a written audit  
264 report to the assistance program, the department, the professional  
265 assistance oversight committee established under section 2 of this act  
266 and the joint standing committee of the General Assembly having  
267 cognizance of matters relating to public health, in accordance with the  
268 provisions of section 11-4a of the general statutes.

269       Sec. 2. (NEW) (*Effective from passage*) (a) The Department of Public  
270 Health shall establish a professional assistance oversight committee for  
271 the assistance program. Such committee's duties shall include, but not  
272 be limited to, overseeing quality assurance. The oversight committee  
273 shall consist of the following members: (1) Three members selected by  
274 the department, who are health care professionals with training and  
275 experience in mental health or addiction services, (2) three members  
276 selected by the assistance program, who are not employees, board or  
277 committee members of the assistance program and who are health care  
278 professionals with training and experience in mental health or  
279 addiction services, and (3) one member selected by the Department of  
280 Mental Health and Addiction Services who is a health care  
281 professional.

282 (b) The assistance program shall provide administrative support to  
283 the oversight committee.

284 (c) Beginning January 1, 2008, the oversight committee shall meet  
285 with the assistance program on a regular basis, but not fewer than four  
286 times each year.

287 (d) The oversight committee may request and shall be entitled to  
288 receive copies of files or such other assistance program records it  
289 deems necessary, provided all information pertaining to the identity of  
290 any health care professional shall first be redacted by the assistance  
291 program. No member of the oversight committee may copy, retain or  
292 maintain any such redacted records. If the oversight committee  
293 determines that a health care professional is not able to practice with  
294 skill and safety or poses a threat to the health and safety of any person  
295 or patient in the health care setting, and the health care professional  
296 has not refrained from practicing health care or has failed to comply  
297 with terms or conditions of participation in the assistance program, the  
298 oversight committee shall notify the assistance program to refer the  
299 health care professional to the department. Upon such notification, the  
300 assistance program shall refer the health care professional to the  
301 department, in accordance with the provisions of subsection (i) of  
302 section 1 of this act.

303 (e) (1) If, at any time, the oversight committee determines that the  
304 assistance program (A) has not acted in accordance with the provisions  
305 of this section or section 1 of this act, or (B) requires remedial action  
306 based upon the audit performed under subsection (l) of section 1 of  
307 this act, the oversight committee shall notify the assistance program of  
308 such determination, in writing, not later than thirty days after such  
309 determination.

310 (2) The assistance program shall develop and submit to the  
311 oversight committee a corrective action plan addressing such  
312 determination not later than thirty days after the date of such  
313 notification. The assistance program may seek the advice and

314 assistance of the oversight committee in developing the corrective  
315 action plan. Upon approval of the corrective action plan by the  
316 oversight committee, the oversight committee shall provide a copy of  
317 the approved plan to the assistance program and the department.

318 (3) If the assistance program fails to comply with the corrective  
319 action plan, the oversight committee may amend the plan or direct the  
320 assistance program to refer some or all of the records of the health care  
321 professionals in the assistance program to the department. Upon such  
322 referral, the department shall determine if each referred health care  
323 professional is eligible for continued intervention, rehabilitation,  
324 referral assistance or support services and whether participation in  
325 such intervention, rehabilitation, referral assistance or support services  
326 should be treated as confidential in accordance with subsection (h) of  
327 section 1 of this act. If the department determines that a health care  
328 professional is an appropriate candidate for confidential participation  
329 in continued intervention, referral assistance, rehabilitation or support  
330 services, the entire record of the referral and investigation of the health  
331 care professional shall be confidential and shall not be disclosed,  
332 except at the request of the health care professional, for the duration of  
333 the health care professional's participation in and upon successful  
334 completion of the program, provided such participation is in  
335 accordance with terms agreed upon by the department and the health  
336 care professional.

337 (4) Upon written notice to the department by the oversight  
338 committee that the assistance program is in compliance with a  
339 corrective action plan developed pursuant to subdivision (2) of this  
340 subsection, the department may refer health care professionals to the  
341 assistance program for continued intervention, rehabilitation, referral  
342 assistance or support services and shall submit to the assistance  
343 program all records and files concerning such health care  
344 professionals.

345 (f) Records created for, by or on behalf of the oversight committee  
346 shall not be deemed public records and shall not be subject to the

347 provisions of section 1-210 of the general statutes. Such records shall be  
348 treated as confidential in accordance with the provisions of subsection  
349 (h) of section 1 of this act.

350 (g) The proceedings of the oversight committee shall not be subject  
351 to discovery or introduced into evidence in any civil action for or  
352 against a health care professional arising out of matters that are subject  
353 to evaluation and review by such committee, and no person who was  
354 in attendance at such proceedings shall be permitted or required to  
355 testify in any such civil action as to the content of such proceedings.  
356 Nothing in this subdivision shall be construed to preclude (1) in any  
357 civil action, the use of any writing recorded independently of such  
358 proceedings; (2) in any civil action, the testimony of any person  
359 concerning such person's knowledge, acquired independently of such  
360 proceedings, about the facts that form the basis for the instituting of  
361 such civil action; (3) in any civil action arising out of allegations of  
362 patient harm caused by health care services rendered by a health care  
363 professional who, at the time such services were rendered, had been  
364 requested to refrain from practicing or whose practice of medicine or  
365 health care was restricted, the disclosure of such request to refrain  
366 from practicing or such restriction; or (4) in any civil action against a  
367 health care professional, disclosure of the fact that a health care  
368 professional participated in the assistance program, the dates of  
369 participation, the reason for participation and confirmation of  
370 successful completion of the program, provided a court of competent  
371 jurisdiction has determined that good cause exists for such disclosure  
372 after (A) notification to the health care professional of the request for  
373 such disclosure, and (B) a hearing concerning such disclosure at the  
374 request of any party, and provided further, the court imposes  
375 appropriate safeguards against unauthorized disclosure or publication  
376 of such information.

377 Sec. 3. Section 20-13e of the general statutes is repealed and the  
378 following is substituted in lieu thereof (*Effective from passage*):

379 (a) The department shall investigate each petition filed pursuant to

380 section 20-13d, in accordance with the provisions of subdivision (10) of  
381 subsection (a) of section 19a-14, to determine if probable cause exists to  
382 issue a statement of charges and to institute proceedings against the  
383 physician under subsection [(e)] (d) of this section. Such investigation  
384 shall be concluded not later than eighteen months from the date the  
385 petition is filed with the department and, unless otherwise specified by  
386 this subsection, the record of such investigation shall be deemed a  
387 public record, in accordance with section 1-210, at the conclusion of  
388 such eighteen-month period. Any such investigation shall be  
389 confidential and no person shall disclose his knowledge of such  
390 investigation to a third party unless the physician requests that such  
391 investigation and disclosure be open. If the department determines  
392 that probable cause exists to issue a statement of charges, the entire  
393 record of such proceeding shall be public unless the department  
394 determines that the physician is an appropriate candidate for  
395 participation in a rehabilitation program in accordance with  
396 [subsection (b) of this section and the physician agrees to participate in  
397 such program in accordance with terms agreed upon by the  
398 department and the physician] the provisions of sections 1 and 2 of  
399 this act. The petition and all records of any physician determined to be  
400 eligible for participation in a rehabilitation program prior to the  
401 effective date of this section, as amended, shall remain confidential  
402 during the physician's participation and upon successful completion of  
403 the rehabilitation program, in accordance with the terms and  
404 conditions agreed upon by the physician and the department. If at any  
405 time subsequent to the filing of a petition and during the eighteen-  
406 month period, the department makes a finding of no probable cause,  
407 the petition and the entire record of such investigation shall remain  
408 confidential unless the physician requests that such petition and record  
409 be open.

410 [(b) In any investigation pursuant to subsection (a) of this section,  
411 the department may recommend that the physician participate in an  
412 appropriate rehabilitation program, provided the department  
413 determines that the physician, during his participation in such a

414 program in accordance with terms agreed upon by the department and  
415 the physician, does not pose a threat in his practice of medicine to the  
416 health and safety of any person. Such determination shall become a  
417 part of the record of such investigation. The department may seek the  
418 advice of established medical organizations in determining the  
419 appropriateness of any rehabilitation program. If the physician  
420 participates in an approved program, with the consent of the  
421 department, the department shall monitor the physician's participation  
422 in such program and require the person responsible for the physician's  
423 activities in such program to submit signed monthly reports describing  
424 the physician's progress therein. The department shall determine if  
425 participation in such a program is sufficient cause to end its  
426 investigation. Upon commencement of the rehabilitation program by  
427 the physician and during his continued participation in such program  
428 in accordance with terms agreed upon by the department and the  
429 physician, all records shall remain confidential.]

430 [(c)] (b) As part of an investigation of a petition filed pursuant to  
431 subsection (a) of section 20-13d, the Department of Public Health may  
432 order the physician to submit to a physical or mental examination, to  
433 be performed by a physician chosen from a list approved by the  
434 department. The department may seek the advice of established  
435 medical organizations or licensed health professionals in determining  
436 the nature and scope of any diagnostic examinations to be used as part  
437 of any such physical or mental examination. The examining physician  
438 shall make a written statement of his or her findings.

439 [(d)] (c) If the physician fails to obey a department order to submit  
440 to examination or attend a hearing, the department may petition the  
441 superior court for the judicial district of Hartford to order such  
442 examination or attendance, and said court or any judge assigned to  
443 said court shall have jurisdiction to issue such order.

444 [(e)] (d) Subject to the provisions of section 4-182, no license shall be  
445 restricted, suspended or revoked by the board, and no physician's  
446 right to practice shall be limited by the board, until the physician has

447 been given notice and opportunity for hearing in accordance with the  
448 regulations established by the commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	20-13e

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

It is anticipated that the Department of Public Health will be able to accommodate provisions in the bill without requiring additional resources.

House "A" makes changes which result in no fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None



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**OLR Bill Analysis****sHB 7155 (as amended by House "A")\******AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS.*****SUMMARY:**

This bill allows state or local health care professional societies and organizations to establish a single assistance program to serve all health care professionals. The assistance program must have one or more medical review committees. A "medical review committee" is a committee that reviews and monitors participation by health care professionals in the assistance program.

The assistance program is an alternative, voluntary, and confidential program for the rehabilitation of health care professionals. It must provide a variety of educational, rehabilitative, and supportive services to health care professionals with a chemical dependency, emotional or behavioral disorder, or physical or mental illness. It must include mandatory, periodic evaluations of each participant's ability to practice with skill and safety and without posing a threat to the health and safety of any person or patient in the health care setting.

The program must annually report certain information to the Department of Public Health (DPH), licensing boards, and the Public Health Committee.

The program is available to the following: physicians and surgeons, physician assistants, chiropractors, naturopaths, homeopathic physicians, podiatrists, athletic trainers, physical therapists, occupational therapists, alcohol and drug counselors, radiographers and radiologic technologists, nurse-midwives, nurses, dentists, dental

hygienists, optometrists, opticians, respiratory care practitioners, psychologists, marital and family therapists, clinical social workers, professional counselors, veterinarians, massage therapists, dietitian-nutritionists, acupuncturists, paramedics, hearing instrument specialists, speech pathologists and audiologists, and embalmers and funeral directors.

A medical review committee must determine a person's appropriateness for the program before admittance. The bill specifies various confidentiality provisions concerning the program and participation by health care professionals.

DPH must establish an oversight committee to monitor program quality. The oversight committee must meet with the assistance program on a regular basis; the program must also undergo an annual audit.

\*House Amendment "A" clarifies the definition of "medical review committee," specifies that DPH can refer professionals to the program after it is notified that the program is in compliance with a corrective action plan, and adds the provision addressing the existing rehabilitation program for impaired physicians.

EFFECTIVE DATE: Upon passage

### **ESTABLISHING THE PROFESSIONAL ASSISTANCE PROGRAM**

The bill authorizes state or local professional societies or membership organizations of health care professionals to establish a single health care professional assistance program to provide education, prevention, intervention, referral assistance, and support services to any health care professional (and anyone who has applied to be one) with a chemical dependency, emotional or behavioral disorder, or physical or mental illness. "Chemical dependency" means abusive or excessive use of drugs, including alcohol, narcotics, or chemicals, that result in physical or psychological dependence.

The program must establish at least one medical review committee.

The program and medical review committee must comply with the bill.

The program must (1) be an alternative, voluntary, and confidential opportunity for the rehabilitation of health care professionals and licensure applicants and (2) include mandatory, periodic evaluations of each participant's ability to practice with skill and safety, and without threat to the health and safety of any person or patient in the health care setting.

Before admitting any health care professional into the program, a medical review committee must (1) determine if the professional is an appropriate candidate for rehabilitation and participation and (2) establish terms and conditions of participation. The bill specifies that a committee's actions must not be construed as practicing medicine or mental health care.

#### **HEALTH CARE PROFESSIONAL'S DISCIPLINARY AND CRIMINAL HISTORY AND PROGRAM PARTICIPATION**

The bill prohibits a medical review committee from referring to the assistance program any health care professional who has (1) pending disciplinary charges against him or her, a prior history of disciplinary action, or a consent order by a professional licensing body or (2) been charged with or convicted of a felony under Connecticut law or an offense that, if committed in Connecticut, would be a felony.

In such cases, the committee must refer the person to the Department of Public Health and provide the department with all records and files maintained by the assistance program on the individual. Upon the referral, DPH must determine if the person is eligible for the assistance program and whether participation should be confidential (see below). DPH can seek advice from professional health care societies and organizations and the assistance program to determine what intervention, referral assistance, rehabilitation program, or support services are appropriate.

The bill requires a health care professional participating in the

assistance program to immediately notify the program when (1) made aware of the filing of any disciplinary charges or any disciplinary action against him or her by a professional licensing or disciplinary body or (2) charged with or convicted of a felony under Connecticut law or an offense that would be a felony if committed in Connecticut.

The assistance program must regularly review available sources to determine if disciplinary charges have been filed or taken against the individual, or felony charges have been filed or substantiated against a professional admitted into the program. After notification, the program must refer the professional to DPH and provide the department with all records and files the program maintains on the person. DPH must then determine if the individual is eligible to continue participating in the program and whether participation should be treated as confidential. DPH can seek advice from professional societies and organizations on appropriate services and interventions.

If DPH determines that the health professional is an appropriate candidate for confidential participation in the assistance program, the entire record of the person's referral and investigation is confidential and cannot be disclosed, except if requested by the health care professional, for the duration of the professional's participation in, and after successful completion of, the program. Participation must be according to the terms agreed to by DPH, the program, and the individual.

#### **FAILURE TO PARTICIPATE IN A PROGRAM**

Under the bill, if (1) the assistance program determines that a professional cannot practice with skill and safety or poses a threat to the health and safety of any person or patient and the professional does not stop practicing or fails to participate in a recommended program or (2) a health care professional referred to the program fails or refuses to participate, the assistance program must refer that professional to DPH and submit to the department all related program records and files.

Upon such a referral, DPH must determine if the person is eligible to participate in the program and whether participation should be confidential. As discussed above, DPH can seek the advice of professional societies or organizations and the assistance program to determine the services appropriate for the individual. The same confidentiality provisions apply.

### **HARMING A PATIENT**

The bill prohibits a medical review committee from referring to the assistance program a health care professional who is alleged to have harmed a patient. After being made aware of such an allegation, the committee and the assistance program must refer the professional to DPH along with all maintained records and files. The referral may include recommendations for appropriate services, referrals, and interventions. DPH must then determine if the person is eligible for such assistance and if so, whether they should be provided confidentially. Again, DPH can seek outside advice. If DPH determines that the person is an appropriate candidate for confidential participation in the program, the confidentiality provisions discussed above apply.

### **REPORTS TO DPH AND LICENSING BOARDS**

The bill requires the assistance program to report on the program annually to the appropriate professional licensing board or commission, or to DPH. (Not every health care profession has a separate licensing board or commission; in some cases DPH is the licensing authority.) The report must include the number of health care professionals participating in the program, the purpose for participating, and whether participants are practicing health care with skill and safety and without posing a threat to the health and safety of any person or patient. By December 31 annually, the program must also report this information to the Public Health Committee.

### **CONFIDENTIALITY PROVISIONS**

Under the bill, all information given or received about an intervention, rehabilitation, referral assistance, or support services

provided, including a health care professional's identity, is confidential. The information cannot be disclosed to a third party or entity unless disclosure is reasonably necessary to (1) accomplish the purposes of the intervention, rehabilitation, referral assistance, or support services or (2) to accomplish an audit (see below). It cannot be requested or disclosed in any civil, criminal, legal, or administrative proceeding, unless the health care professional waives the privilege or disclosure is otherwise required by law.

Under the bill, medical review committee proceedings are not subject to discovery and cannot be introduced as evidence in any civil action for or against a health care professional arising out of matters subject to evaluation and review by the committee. A person who attends such proceedings cannot be allowed or required to testify in any civil action about the content of the proceedings.

On the other hand, the bill specifies that it should not be construed as precluding in any civil action:

1. use of any writing recorded independently of such proceedings;
2. anyone's testimony about his or her knowledge, acquired independently of the proceedings, of the facts that are the basis of the civil action;
3. arising out of allegations of patient harm caused by the professional who, at the time of providing services, had been requested to refrain from practicing or whose practice was restricted, disclosure of such request or restriction; or
4. against a professional, disclosure of the fact that the individual participated in the assistance program, dates of participation, reason for participation, and confirmation of successful completion.

The court must determine that good cause exists for the disclosure after (a) notifying the professional of the disclosure request; (b) a

hearing is held concerning the disclosure, at the request of any party; and (c) the court imposes appropriate safeguards against unauthorized disclosure or publication of the information.

The bill specifies that it should not be construed to prevent the assistance program from disclosing information about administrative proceedings related to disciplinary action taken against a professional whom the assistance program or oversight committee referred to DPH.

### **REQUIRED REPORTING**

Current law requires physicians, hospitals, and medical societies to report an impaired physician or physician assistant to DPH within 30 days of knowing of the impairment (CGS §§ 20-12e & 20-13d). Impairment means that the physician is or may be unable to practice medicine with reasonable skill or safety because of:

1. physical illness or loss of motor skill;
2. emotional disorder or mental illness;
3. drug abuse;
4. illegal, incompetent, or negligent conduct in the practice of medicine;
5. possession, use, or distribution of controlled substances or legend drugs (except for therapeutic purposes); or
6. misrepresentation or concealment of a material fact in obtaining or reinstating a medical license.

Under the bill, any physician, physician assistant, hospital, or state or local professional society of health care professionals that refers a physician or physician assistant for intervention to the assistance program is deemed to have satisfied the obligations of the existing law described above.

### **AUDITS**

By November 1, 2007 and annually afterwards, the assistance program must select an individual the program and DPH determine qualified to audit the assistance program. The audit's purpose is to examine the program's quality control and compliance with the bill. By November 1, 2011, DPH, with the agreement of the professional assistance oversight committee (see below), may waive the audit requirement in writing.

An audit must be a random sampling of the greater of at least 20% of the assistance program's files or 10 files. Before auditing, the auditor must agree in writing not to (1) copy any program files or records; (2) remove any program files or records from the premises; (3) disclose personally identifying information about professionals in the program to anyone other than a person or entity employed by the program and authorized to receive disclosure; and (4) disclose in any audit report any personally identifying information about professionals participating.

The auditor must also agree to destroy all personally identifying information about health care professionals participating in assistance programs after the audit is complete.

After completing the audit, the auditor must submit a written audit report to the assistance program, the oversight committee, and the Public Health Committee.

## **PROFESSIONAL ASSISTANCE OVERSIGHT COMMITTEE**

### ***Members and Responsibilities***

The bill requires DPH to establish a seven-member professional assistance oversight committee to oversee the program's quality assurance. The committee must include the following: (1) three members selected by DPH, who are health care professionals with training and experience in mental health or addiction services; (2) three members selected by the assistance program, who are not employees, board, or committee members of the assistance program and who are health care professionals with training and experience in mental health



or addiction services; and (3) one member selected by the Department of Mental Health and Addiction Services, who is a health care professional. The bill requires the assistance program to provide administrative support to the committee.

Beginning January 1, 2008, the oversight committee must meet with the assistance program at least four times a year.

Under the bill, the committee may request and is entitled to receive copies of files or other assistance program records it deems necessary, provided the program redacts all information about the identity of any professional. Oversight committee members cannot copy, retain, or maintain any redacted records. If the committee determines that a professional is unable to practice with skill and safety or poses a threat to the health and safety of any person or patient, and the professional has not stopped practicing or has failed to comply with the terms and conditions of participation in the assistance program, the oversight committee must notify the assistance program to refer the person to DPH. Upon notification, the assistance program must refer the professional to DPH, according to the procedures specified above.

***Failure of the Assistance Program to Act According to Law;  
Corrective Action Plan***

The bill requires the oversight committee to notify the assistance program within 30 days of a determination that the assistance program (1) has not acted according to law or (2) requires remedial action based on the audit. The assistance program must develop a corrective action plan within 30 days of the notification. If the assistance program fails to comply with the corrective action plan, the oversight committee can amend it or direct the program to refer some or all of the records of persons in the program to DPH. DPH must then determine if each referred person is eligible for continued services and whether such participation should be treated as confidential.

DPH can refer health care professionals back to the program for continued intervention, rehabilitation, referral assistance, or support

services after the oversight committee gives DPH written notice that the assistance program is in compliance with the corrective action plan. DPH must provide the assistance program with all records and files about the health care professionals.

### ***Confidentiality of Committee Records***

Under the bill, oversight committee records are not public records and not subject to the Freedom of Information Act. They must be treated as confidential. Oversight committee proceedings are not subject to discovery or introduction into evidence in any civil action for or against a health care professional arising out of matters subject to evaluation and review by the committee. No person in attendance at committee proceedings is allowed or required to testify in any civil action about the proceedings. The bill allows the same disclosures and uses of information in civil actions as described above in the “Confidentiality” section.

### **CURRENT PROGRAM FOR IMPAIRED PHYSICIANS**

Under current law, physicians, hospitals, and medical societies that know a physician is unable to practice skillfully or safely due to a variety of specified reasons must report the physician to DPH, by filing a petition. The Medical Examining Board and individuals may also make such reports. The mandatory reports must be made within 30 days of knowing of the impairment. Impairment basically means that the physician is or may be unable to practice with reasonable skill or safety because of (1) physical illness or loss of motor skill; (2) emotional disorder or mental illness; (3) drug abuse; (4) illegal, incompetent or negligent conduct in the practice of medicine; (5) possession, use or distribution of controlled substances or legend drugs; or (6) misrepresentation or concealment of a material fact in obtaining or reinstating a license. DPH must investigate each report to determine if probable cause exists to issue a statement of charges and institute proceedings against the physician. The investigation is confidential and must be concluded within 18 months. After that time, the record becomes public information.

Existing law allows DPH to recommend that the physician participate in an appropriate rehabilitation program. DPH must determine that the physician will pose no threat to the health and safety of any person in his practice during his participation in the program. Such a determination becomes part of the record of the investigation of the physician. DPH can seek the advice of established medical organizations in determining the appropriateness of any rehabilitation program. Following completion of the rehabilitation program and during his continued participation in it according to the terms agreed upon by the physician and DPH, all records remain confidential.

Under the bill, if DPH determines the physician is an appropriate candidate for rehabilitation it can refer him or her to the assistance program established under the bill. The bill specifies that the petition and all records of a physician determined eligible for participation in the existing physician rehabilitation program before the bill is enacted, must remain confidential during the physician's participation in, and upon successful completion of, the program, according to the terms and conditions agreed to by the physician and DPH.

### **COMMITTEE ACTION**

#### Public Health Committee

Joint Favorable Substitute Change of Reference  
Yea 27 Nay 0 (03/26/2007)

#### Judiciary Committee

Joint Favorable  
Yea 43 Nay 0 (04/10/2007)

#### Government Administration and Elections Committee

Joint Favorable  
Yea 12 Nay 0 (05/02/2007)

#### Joint Committee on Legislative Management

Joint Favorable

Yea     28     Nay   0     (05/09/2007)